

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3585-06
Bill No.: Perfected SCS for SBS 1027 & 896
Subject: Bonds - Bail; Law Enforcement Officers and Agencies; Insurance Dept.
Type: Original
Date: March 11, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Insurance Dedicated Fund	\$22,548	\$39,939	\$36,855
Total Estimated Net Effect on <u>All</u> State Funds	\$22,548	\$39,939	\$36,855

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Missouri Department of Conservation, Department of Economic Development - Division of Professional Registration, Office of State Treasurer, Department of Public Safety (DPS) - Capitol Police and Missouri Department of Transportation** assume the proposal will have no fiscal impact on their organizations.

Officials from the **DPS - Missouri State Highway Patrol (MHP)** state its Training Division assumes that it will not be involved in the training of the agents. Therefore, the MHP anticipates no fiscal impact from the proposal.

Officials from the **Office of Attorney General** assume any costs associated with the proposal will be absorbable within current funding levels.

Officials from the **Office of Administration - Administrative Hearing Commission** assume the proposal will not significantly alter its caseload. However, if other similar proposals also pass, there are more cases, or the cases are more complex, there could be a fiscal impact.

Officials from the **Office of Prosecution Services (OPS)** assume any costs associated with this proposal would be absorbable within current funding levels.

ASSUMPTION (continued)

Officials from the **Office of State Courts Administrator (CTS)** state the proposed legislation would make changes to the bail bondsmen licensing provisions. The legislation would allow recognizance bonds only when the defendant is a local resident, has no prior convictions for failure to appear, and specifies when bonds can be forfeited and remitted to the surety.

Officials state the CTS does not have reliable data on the number of bail bonds. The proposal may cause more work for the clerk to mail out the notice by certified mail. A larger issue is the return of the bond forfeiture to surety. The courts turn the money over to the county treasury, and the treasurers in turn distribute the money to the schools. The courts will not have money one year later to refund back to the surety. In addition, most of the individuals who fail to appear in court are only convicted on the original charge, not on the failure to appear.

The CTS states it is not able to provide an estimate of the possible fiscal impact of this proposal.

Oversight has presented an unknown cost to school districts beginning in FY 05 since the courts could be returning bond forfeiture moneys to the surety agent up to one year after the bond has been received by the courts and distributed to schools.

Officials from the **Department of Corrections (DOC)** state the DOC cannot predict the number of new commitments which may result from the creation of the offenses(s) outlined in this proposal. An increase in commitment depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost through either incarceration (FY 03 average of \$38.10 per inmate per day or an annual cost of \$13,907 per inmate) or through supervision provided by the Board of Probation and Parole (FY 03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender per year).

DOC assumes the narrow scope of the crime will not encompass a large number of offenders. The low felony status of the crime enhances the possibility of plea-bargaining or the imposition of a probation sentence. The probability also exists that offenders would be charged with a similar but more serious offence of which sentences may run concurrent to one another.

Supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State (SOS)** state this proposal makes changes to the bail bondsmen and surety recovery agents licensing provisions. The Department of Insurance may promulgate rules to implement this proposal. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Insurance could require as many as 25 pages in the *Code of State Regulations*. For any given rule, roughly one-half again as many pages are published in the *Missouri Register* as are published in the Code because cost statements, fiscal notes and notices are not published in the Code. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. The actual costs could be more or less than the numbers given. The fiscal impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn. The SOS estimates the cost of this legislation to be \$1,550 [(25 pp x \$27) + (38 pp x \$23)].

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Insurance (INS)** state Missouri currently has 836 bail bond agents, 80 general bail bond agents and 34 bail bond corporations. If a bail bond agent performs his own fugitive recovery, then they would be required to be licensed as a surety recovery agent. Based on these totals, INS is estimating that approximately 1,000 surety recovery agents may become licensed.

Based on the anticipated number of surety recovery agents, the Licensing Section would need one (1) additional FTE as a Licensing Tech. I. This position would be responsible for processing applications, reviewing hours of courses taken as part of application, producing licenses, mailing renewals, answering phone and correspondence inquiries, related data entry and other clerical work related to this license. If number of surety recovery agents surpasses this estimate, additional staff may be needed.

The INS is also requesting one (1) Investigator II to investigate complaints against surety recovery agents and to review applications of existing licensees as needed for violations, suspensions or revocations.

The INS assumes that the examination process will be contracted out and the applicant will be responsible for paying the cost of examination directly to contractor. A copy of photo identification is part of application requirements, but the INS assumes a standard license without

photo will be issued to licensee.

ASSUMPTION (continued)

The INS does not have the staff or the expertise to provide the training required for bail bond or surety recovery agents. The INS assumes that it would approve other organizations to provide this training at the specified limits of \$200 for initial and \$150 for continuing education.

Application fees and renewals are to be set by the INS, not to exceed \$150 for two years. The application and/or renewal fee is estimated to be \$150 for biennial license. This would generate approximately \$75,000 for each year of the two year license. Fees will be deposited into the Insurance Dedicated Fund. Licensing would occur on a two-year cycle but revenue is shown on a yearly basis as all applications and renewals will not occur on the same date and would be spread over two fiscal years. A biennial fee of \$150 will not be sufficient to cover the cost of administering the licensing program for surety recovery agents.

The proposal allows for a fee up to \$150 for two year license for bail bond and general bail bond agents. Currently the license and renewal fee is \$25 annually. If this fee were raised to \$150 each year for the approximately 1,000 bail bond and general bail bond agents, then an additional \$50,000 per year would be generated ($\$150 \text{ new fee} - \$50 (\$25 \text{ each year for two years}) = \$100 \times 1,000 = \$100,000 \text{ for two years or } \$50,000 \text{ each year}$).

Oversight has, for fiscal note purposes only, changed the starting salary for the Licensing Tech I and Investigator II to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

Officials from the **Department of Public Safety - Missouri State Water Patrol** did not respond to our request for a statement of fiscal impact. However, in response to a similar proposal, the Water Patrol assumed the proposal would have no fiscal impact on their organization.

Officials from the **Office of Administration - Division of Budget and Planning (BP)** did not respond to our request for a statement of fiscal impact. However, in response to a similar proposal the BAP assumed the proposal will have no fiscal impact on their organization. The proposal would increase total state revenue.

This proposal will result in an increase in Total State Revenue.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
INSURANCE DEDICATED FUND			
<u>Income - Department of Insurance</u>			
Licensing fees and renewals	\$104,167	\$125,000	\$125,000
<u>Costs - Department of Insurance</u>			
Personal service costs (2 FTE)	(\$44,147)	(\$53,671)	(\$55,658)
Fringe benefits	(\$18,277)	(\$22,220)	(\$23,042)
Equipment and expense	<u>(\$19,195)</u>	<u>(\$9,170)</u>	<u>(\$9,445)</u>
Total <u>Costs</u> - Department of Insurance	<u>(\$81,619)</u>	<u>(\$85,061)</u>	<u>(\$88,145)</u>
ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>\$22,548</u>	<u>\$39,939</u>	<u>\$36,855</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2005 (10 Mo.)	 FY 2006	 FY 2007
SCHOOL DISTRICTS			
<u>Loss - School Districts</u>			
Return of Bond Forfeiture Moneys	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET IMPACT ON SCHOOL DISTRICTS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

The proposal could have an impact on small bail bondsmen and surety recovery businesses.

DESCRIPTION

The proposal shall be known as the "Professional Bail Bondsmen and Surety Recovery Agent Licensure Act". Under this proposal, no person shall engage in the activities of a bail bond agent or a general bail bond agent without being licensed. Judges, attorneys, court officials, law enforcement officers and public employees cannot be licensed as such agents. A licensed bail bond agent cannot execute or issue appearance bonds without a valid appointment from a general bail bond agent and without attaching to the appearance bond an executed and prenumbered

power of attorney referencing the general bail bond agent or insurer.

DESCRIPTION (continued)

A bail bond agent must be licensed for two years before being licensed as a general bail bond agent. Bail bond agents cannot have unlicensed people soliciting or engaging in business for them. A person posting a bail bond who receives no fee is not affected by such licensing requirements. It is a class A misdemeanor to violate such requirements.

The Department of Insurance administers and enforces this act and the Director of the Department sets the amount of fees required.

New bail bond agents and general bail bond agents must have at least 24 hours of initial basic training and at least 16 hours of biennial continuing education. The Department will set the amount of fees to be paid for the training, which cannot exceed \$200 for the initial basic training and \$150 for the continuing education. After completing the training, the Director will issue a two-year license for a fee of no more than \$150.

The proposal requires that a person prove, along with other requirements, that he or she has a high school diploma or GED in order to receive a license. Those currently employed in such positions are not required to meet these educational requirements.

In addition, applicants for general bail bond agent licenses must furnish proof that the applicant completed two years as a bail bond agent and possess at least \$10,000 in liquid assets along with a duly executed assignment of \$10,000 to the state. The Director may require additional assignments of assets when the accumulation of unwarranted judgments by the general bail bond agent warrants additional funds, which cannot exceed \$25,000.

The proposal requires bail bond agents to account for each power of attorney assigned by the general bail bond agent if he or she makes such a request in writing. The general bail bond agent must maintain certain records and provide copies of the bail contract to certain interested parties.

No insurer or licensee, court, or law enforcement officer shall pay a fee, give anything of value, or accept anything of value, in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond.

A licensee may accept collateral security from the principal in a fiduciary capacity, which collateral shall be returned upon final termination of liability on the bond. The licensee must provide a prenumbered written receipt and report the acceptance of the collateral to the general bail bond agent. The collateral security may be used to reimburse the licensee for costs associated with forfeiture. The general bail bond agent must retain records relating to the use of

the collateral to reimburse the licensee.

DESCRIPTION (continued)

All licenses issued to bail bond agents and general bail bond agents shall be renewed biennially.

In addition to other requirements, an applicant who is licensed in another state cannot have any suspensions or revocations of a license, must pay the same fees as resident applicants, and complete the same education requirements. The Department of Insurance may negotiate reciprocal compacts with other states for the admission of licensed bail bond agents.

The proposal modifies and creates new reasons the Director of the Department of Insurance may file a complaint with the administrative hearing commission against a license holder or a person who fails to renew his or her license.

The proposal allows the Director to suspend or revoke a license or enter into agreements for monetary penalties in lieu of formal discipline of a bail bond agent. The Director is also given the power to issue a cease and desist order or seek an injunction when it appears an unlicensed person is violating this proposal.

The proposal requires the court to extend the judgment date or notify the Department of the failure to satisfy the judgment after a six-month period. All bail bond agents and general bail bond agents shall be qualified to write bail upon a surety's liability in all courts of the state.

Any bail bond agent licensed in the state shall have access to all publicly available court records of the defendant to make an assessment of the defendant's probability of attending all court dates. The proposal has provisions which provide for defendants and bail bond agents having access to each other and the conditions associated with such access.

The proposal allows the Director of the Department of Insurance to examine and inquire into all alleged violations of bail bond law of this state, complaints filed with the department, and business transacted by any bail bond agent, general bail bond agent or surety recovery agent. The Director, or an appointee, may compel appearance and examine people when investigating a matter of concern.

The proposal requires surety recovery agents to be licensed. The Director of the Department of Insurance shall control the licensing process and set the amount of fees required. Licenses for surety recovery agents are valid for two years and the fees for the license cannot exceed \$150.

Applications for examination and licensure as a surety recovery agent are on forms prescribed by the Department of Insurance and must be accompanied by proof that the applicant is a US citizen and at least 21 years old, and has a high school diploma or GED. The completion of 24 hours of

initial basic training is required along with 16 hours of biennial continuing education.

DESCRIPTION (continued)

The proposal requires the Director to issue licenses, with limited exceptions, to surety recovery agents from other jurisdictions for two years. The Department of Insurance may negotiate reciprocal compacts with other states for admission of licensed surety recovery agents.

The proposal allows a surety, or a surety recovery agent with written authority, to apprehend a defendant anywhere within the state before or after the forfeiture of the undertaking without personal liability for false imprisonment.

The proposal sets out provisions for renewal of surety recovery agent licenses. The Director may refuse to renew any license for reasons specified in the proposal.

The proposal creates reasons the Director of the Department of Insurance may file a complaint with the administrative hearing commission against a license holder or a person who fails to renew his or her surety recovery agent license. Instead of filing a complaint with the administrative hearing commission, the Director and surety recovery agent may enter into an agreement for a monetary penalty. Also, after a finding by the commission of a violation, the surety recovery agent's license may be suspended or revoked. The Director may also issue a cease and desist order or seek an injunction against those appearing to act as a surety recovery agent without a license.

A bail bond agent, general bail bond agent, or surety recovery agent may detain a subject in a lawful manner and enter upon private or public property in order to execute apprehension of the subject, if the agent has probable grounds to believe the subject breached the terms of the surety agreement. The agent may detain the subject for no more than 72 hours when travel time is required. The agent may transport the subject from state to state, and county to county, to a place of authorized surrender.

Under this proposal, it is a class D felony if a person does not have a valid surety recovery agent license or bail bond agent license and holds himself or herself out as a licensed agent, claims that he or she can render such services, or engages in fugitive recovery. If an agent wrongfully causes damage to person or property while apprehending a person, he or she will be liable for such damages.

The court may forfeit the bond or order an execution hearing between 60 and 180 days after the person fails to appear for trial, judgment, or on another occasion when his or her presence is needed. If the bail bond agent provides proof that the defendant is incarcerated or that it is physically impossible for the defendant, bail bond agent, or surety to satisfy conditions of the bond, the bail bond agent or surety shall be released from liability and all money and property

deposited with the court shall be returned within ten days.

DESCRIPTION (continued)

On application of the surety filed within one year of the payment of final judgment, the court shall order remission of 100% of the bond amount to the surety under certain conditions.

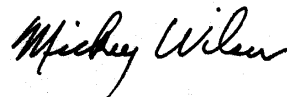
The proposal establishes that a defendant shall be surrendered without the return of the premium for the bond if the indemnitor attests in writing the desire to be released or if the agent discovers the defendant is guilty of certain activities. Upon forfeiture of the bond, the court may order that the defendant's driver's license be suspended until such time as the defendant has satisfied the forfeiture.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of Administration -
 Administrative Hearing Commission
Office of State Courts Administrator
Department of Economic Development -
 Division of Professional Registration
Department of Public Safety -
 Missouri State Highway Patrol
 Capitol Police
Department of Corrections
Missouri Department of Transportation
Department of Insurance
Missouri Department of Conservation
Office of Prosecution Services
Office of Secretary of State
Office of State Treasurer

**NOT RESPONDING: Department of Public Safety- Missouri State Water Patrol and
Office of Administration - Division of Budget and Planning**



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Director
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